

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR.

1. **D.B. CIVIL SPECIAL APPEAL NO.01416/2007**  
**M/s Koheera Finishing Centre V/s Regional**  
**Director, ESI and anr.**
2. **D.B. CIVIL SPECIAL APPEAL NO.05966/2006**  
Smt. Vinod Choudhary and ors. V/s National  
Insurance Ltd. and anr.
3. **D.B. CIVIL SPECIAL APPEAL NO.05963/2006**  
The New India Assurance Co. V/s Smt. Kailash  
Kanwar and ors.
4. **D.B. CIVIL SPECIAL APPEAL NO.05884/2006**  
Salag Ram and ors. V/s Santosh Kumar and ors.
5. **D.B. CIVIL SPECIAL APPEAL NO.05962/2006**  
Jagdish Kumar V/s Kishna Ram and ors.
6. **D.B. CIVIL SPECIAL APPEAL NO.05964/2006**  
National Insurance Co. Ltd. V/s Smt. Ladi and ors.
7. **D.B. CIVIL SPECIAL APPEAL NO.05783/2006**  
RSRTC V/s Smt. Shakuntala Priya and ors.
8. **D.B. CIVIL SPECIAL APPEAL NO.04683/2006**  
Chimna Ram V/s Ladu Lal and ors.
9. **D.B. CIVIL SPECIAL APPEAL NO.04943/2006**  
National Insurance Co. Ltd. V/s Kailash Chandra and  
ors.
10. **D.B. CIVIL SPECIAL APPEAL NO.04975/2006**  
Rukma Nand V/s Sukh Ram and ors.
11. **D.B. CIVIL SPECIAL APPEAL NO.01327/2007**  
Geeta and anr. V/s Gautam and anr.
12. **D.B. CIVIL SPECIAL APPEAL NO.01020/2007**  
Mohd. Riyaz and ors. V/s Yogesh Raj and ors.
13. **D.B. CIVIL SPECIAL APPEAL NO.0995/2007**  
Smt. Asha Tiwari and ors. V/s M/s Swift Carriers Pvt.  
Ltd. and anr.

- 14. D.B. CIVIL SPECIAL APPEAL NO.101/2006**  
Kamli Devi and ors. V/s Sh. Teja Ram and ors.
- 15. D.B. CIVIL SPECIAL APPEAL NO.41/2005**  
Oriental Insurance Co. Ltd. V/s Smt. Nasim and ors.
- 16. D.B. CIVIL SPECIAL APPEAL NO.75/2007**  
Gordhan Ram V/s Mohan Lal and ors.
- 17. D.B. CIVIL SPECIAL APPEAL NO.70/2007**  
Employees State Insurance Corporation V/s M/s Sahil Guest House
- 18. D.B. CIVIL SPECIAL APPEAL NO.169/2006**  
National Insurance Co. Ltd. V/s Daulat Ram and ors.
- 19. D.B. CIVIL SPECIAL APPEAL NO.111/2006**  
Smt. Sunder Bai and ors. V/s Sh. Daya Lal and ors.
- 20. D.B. CIVIL SPECIAL APPEAL NO.67/2007**  
Mishri Mal and ors. V/s Jeeva Ram and anr.
- 21. D.B. CIVIL SPECIAL APPEAL NO.05636/2006**  
Smt. Fuma Devi and ors. V/s Bhanwar Lal and ors.
- 22. D.B. CIVIL SPECIAL APPEAL NO.05637/2006**  
Smt. Kanudi and anr. V/s Ram Kishore and anr.
- 23. D.B. CIVIL SPECIAL APPEAL NO.05333/2006**  
Mst. Lalita and ors. V/s Om Prakash and ors.
- 24. D.B. CIVIL SPECIAL APPEAL NO.05782/2006**  
RSRTC V/s Smt. Shakuntala and ors.
- 25. D.B. CIVIL SPECIAL APPEAL NO.05732/2006**  
Shravan Kumar and ors. V/s Mahendra Kumar and ors.
- 26. D.B. CIVIL SPECIAL APPEAL NO.05002/2006**  
Smt. Beena Jain and ors. V/s Tilak Raj and ors.
- 27. D.B. CIVIL SPECIAL APPEAL NO.04936/2006**  
Bal Kishan V/s Smt. Hemlata

- 28. D.B. CIVIL SPECIAL APPEAL NO.05781/2006**  
Smt. Gulab Bai and anr. V/s Arvind Arora and anr.
- 29. D.B. CIVIL SPECIAL APPEAL NO.80/2006**  
Bhanwar Lal V/s Smt. Amita
- 30. D.B. CIVIL SPECIAL APPEAL NO.05867/2006**  
Smt. Supal @ Rupali and anr. V/s Shrawan Singh and  
ors.
- 31. D.B. CIVIL SPECIAL APPEAL NO.05823/2006**  
Surendra Kumar Sethia V/s Smt. Indra Devi
- 32. D.B. CIVIL SPECIAL APPEAL NO.05993/2006**  
Poosa Ram V/s National Insurance Ltd. and ors.
- 33. D.B. CIVIL SPECIAL APPEAL NO.05973/2006**  
Bhaga Ram V/s Kesha Ram and ors.
- 34. D.B. CIVIL SPECIAL APPEAL NO.05965/2006**  
Smt. Bali and ors. V/s Union of India and ors.
- 35. D.B. CIVIL SPECIAL APPEAL NO.06397/2006**  
Umesh V/s Nirmala
- 36. D.B. CIVIL SPECIAL APPEAL NO.65/2007**  
Radhe Shyam and ors. V/s Narayan and ors.
- 37. D.B. CIVIL SPECIAL APPEAL NO.66/2007**  
Dharam Singh and ors.. V/s Meetha Lal and ors.
- 38. D.B. CIVIL SPECIAL APPEAL NO.170/2006**  
Triveni Devi V/s Gen Singh and ors.
- 39. D.B. CIVIL SPECIAL APPEAL NO.05824/2006**  
The New India Assurance Co. Ltd. V/s Ganga Devi  
and ors.
- 40. D.B. CIVIL SPECIAL APPEAL NO.13/2003**  
Ajmer V.V. Nigam Ltd. V/s Sampat Lal Kothari and  
ors.
- 41. D.B. CIVIL SPECIAL APPEAL NO.16/2007**  
Smt. Manju Yadav. V/s Devendra Singh
- 42. D.B. CIVIL SPECIAL APPEAL NO.01298/2007**  
Kundan Lal V/s National Insurance Ltd. and anr.

- 43. D.B. CIVIL SPECIAL APPEAL NO.54/2005**  
The Oriental Insurance Co. Ltd. V/s Anurag Sharma  
and ors.
- 44. D.B. CIVIL SPECIAL APPEAL NO.55/2005**  
The Oriental Insurance Co. Ltd. V/s Anand Sharma
- 45. D.B. CIVIL SPECIAL APPEAL NO.56/2005**  
The Oriental Insurance Co. Ltd. V/s Jagdish Chandra  
Sharma
- 46. D.B. CIVIL SPECIAL APPEAL NO.71/2002**  
National Insurance Co. V/s Jagdish Rai and ors.
- 47. D.B. CIVIL SPECIAL APPEAL NO.187/2003**  
Smt. Shakuntala Bai V/s Smt. Kanta Devi and anr.
- 48. D.B. CIVIL SPECIAL APPEAL NO.44/2006**  
Oriental Insurance Co. Ltd. V/s Hemta and ors.
- 49. D.B. CIVIL SPECIAL APPEAL NO.32/2006**  
The Oriental Insurance Co. Ltd. V/s Pawan Kumar  
and ors.

Date of Order : 23-08-2007

**REPORTABLE**

**HON'BLE MR. P.B. MAJMUDAR,J.  
HON'BLE MR.MUNISHWAR NATH BHANDARI,J.**

|                    |   |                    |
|--------------------|---|--------------------|
| Mr. D.K.Parihar,   | } |                    |
| Mr.Kailash Trivedi | } |                    |
| Mr.M.L.Khatri      | } |                    |
| Mr.Nadish Singhvi  | } |                    |
| Mr.Mukesh Patodia  | } |                    |
| Mr.L.D.Khatri      | } | for the appellants |
| Mr.Shambhoo Singh  | } |                    |
| Mr.Sanjeev Johari  | } |                    |
| Mr.Arjun Singh     | } |                    |
| Mr.Jagdish Vyas    | } |                    |
| Mr.Rakesh Arora    | } |                    |
| Mr.D.S.Udawat      | } |                    |

|                      |   |                      |
|----------------------|---|----------------------|
| Mr.Pradeep Chaudhary | } |                      |
| Mr.Ravi Bhansali     | } |                      |
| Mr.Sandeep Sarupria  | } |                      |
| Mr.Sunil Mehta       | } |                      |
| Mr.Kuldeep Mathur    | } |                      |
| Mr.K.R.Chaudhary     | } |                      |
| Mr.R.K.Singhal       | } |                      |
| Mr.Lalit Kawadia     | } |                      |
| Mr.Anil Bachawat     | } |                      |
| Mr.Rajesh Joshi      | } |                      |
| Mr. Mukesh Vyas      | } |                      |
| Mr.Manoj Bhandari    | } |                      |
| Mr.Rajesh Panwar     | } |                      |
| Mr.UCS Singhvi       | } |                      |
| Mr.R.K.Kapoor        | } |                      |
| Mr.Suresh Shrimali   | } |                      |
| Mr.S.P.Sharma        | } |                      |
| Mr.Jitendra Gang     | } |                      |
| Mr.Tribhuvan Gupta   | } |                      |
|                      |   |                      |
| Mr.S.L. Jain         | } |                      |
| Mr.Ramit Mehta       | } |                      |
| Mr.Vijay Vyas        | } |                      |
| Mr.Trilok Joshi      | } | for the respondents. |
| Ms. Pratishtha Dave  | } |                      |
| Mr.Haider Agha       | } |                      |
| Mr.Varun Gupta       | } |                      |

**By the Court (Per Mr.Majmudar,J.)**

Since common question of law is involved in connection with maintainability of Civil Special appeal against the decision of the learned Single judge, all these matters are disposed of by this common order.

All the special appeals are preferred against the decision of learned Single Judge delivered in various civil

misc. appeals. The Civil misc. appeals were filed either under Section 96 of C.P.C. or under the provisions of Motor Vehicles Act or against the order of ESI Court or any other special statute. However, the fact remains that the learned Single Judge has passed the orders on merits in various such S.B. Civil misc. appeals, therefore, the question which arises for determination is whether the civil special appeal is maintainable against the decision of learned Single Judge passed in civil misc. appeal, in view of provisions of Section 100A C.P.C. and recent judgment of Jaipur Bench of this Court in the case of RSRTC V/s Vaibhav Kumar and ors. reported in AIR 2007 (Raj.) 147.

So far as the misc.appeal No.01416/2007 is concerned, the same is filed against the order passed by the learned Single Judge in Civil Misc. Appeal No.1998/1994 and said appeal was preferred before the learned Single Judge under the provisions of Section 82 of the Employees State Insurance Act, 1948. As pointed out earlier, other appeals are filed against such other orders of learned Single Judge exercising the appellate jurisdiction. Since the matter is required to be decided on preliminary point of maintainability of these appeals, it is not necessary to examine the facts of each and every case. The basic question which requires consideration is whether such

special appeals are maintainable in view of provisions of Section 100A C.P.C.

The learned counsel Mr.D.K. Parihar submitted that in view of provisions of Section 18 of the Rajasthan High Court ordinance read with Rule 134 of the Rajasthan High Court Rules, the appeal is maintainable irrespective of bar under Section 100A C.P.C. It is submitted that right of appeal cannot be said to have been curtailed as the appellant has got vested right the moment he files the suit and such vested right cannot be taken away or such right cannot be abridged. It is submitted by Mr. Parihar that when the Rules are framed under Article 225 of the Constitution of India, the appeal can still be said to be maintainable in view of the Rajasthan High Court Rules . In order to substantiate this say, Mr. Parihar relied upon the decision of Hon'ble Supreme Court in the case of P.S. Sathappan V/s Andhra Bank Limited reported in AIR 2004 SC 5152 as well as Full Bench decision of this Court in the case of State of Rajasthan V/s V.R.C. Mishra and ors. reported in 2003(2) WLC 235. It is submitted that right of appeal can be said to have been accrued to the appellant at the time when he files the suit and therefore, such right is still available irrespective of provisions of Section 100A

C.P.C. It is submitted that the first before the learned Single Judge is also provided under some special Acts such as Motor Vehicles Act, Workmen's Compensation Act etc. and right to file further appeal cannot be taken away under the general law as otherwise provided under the Rajasthan High Court Rules. Mr. Parihar further submitted that the order of Division Bench of this Court delivered in the case of RSRTC V/s Vaibhav Kumar (supra) is required to be referred to the larger bench. Mr. Parihar has also submitted that the said judgment is per incuriam and is not binding in other cases. Mr. Parihar further submitted that in view of provisions of Section 18 of the Rajasthan High Court Ordinance read with Rule 134 of the Rajasthan High Court Rules, this appeal is maintainable irrespective of the bar under Section 100A C.P.C. Other advocates appearing for the respective appellants have supported the arguments of Mr. Parihar.

The basic question which requires consideration is whether this appeal before the Division Bench is competent against the decision of learned Single Judge while exercising the powers which is in the nature of appeal under Section 96 C.P.C. and whether such appeals are maintainable against the order of learned Single Judge

exercising its appellate jurisdiction.

We have heard the learned counsel Mr. Parihar at great length. We have also considered his submissions in this behalf. In order to decide the controversy about the maintainability of special appeal against the order of the learned Single Judge exercising appellate jurisdiction, reference is required to be made to Section 100A C.P.C. which is applicable w.e.f. 1.7.2002. Section 100A C.P.C. produces as under:

“100A. No further appeal in certain cases:- Notwithstanding anything contained in any Letters Patent for any High Court in any other instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge.”

It is not in dispute that the learned Single Judge in each of these cases have exercised respective appellate powers against the order of the trial Court. In this connection, reference is required to be made to the decision of this Court in the case of RSRTC V/s Vaibhav

Kumar (supra). The Division Bench of this Court after considering the judgment of Hon'ble Supreme Court in the case of Kamal Kumar Dutta and another V/s Ruby General Hospital Ltd. and ors. reported in (2006) 7 SCC 613 has held that such special appeals are not maintainable in view of provisions of Section 100A C.P.C. The question before the said Division Bench was whether such special appeals are still maintainable irrespective of amendment of Section 100A C.P.C. The Division Bench of this Court has considered the earlier judgment of Division Bench in the case of Fazal Ali V/s Amna Khatun reported in 2004(1) WLC (Raj.) 339 wherein the view is taken that Section 100A C.P.C. does not take away the letters patent jurisdiction of the High Court as the Tribunal under the Motor Vehicles Act is not a Civil Court as contemplated under the Code of Civil Procedure. In the said judgment, it was held that the provisions contained in Section 100A C.P.C. is applicable to only decree or order passed by a Civil Court, but not to the order passed by the Tribunal. In the circumstances, it was held that special appeal against the judgment or order of a Single Judge in an appeal preferred under Section 173 of the Motor Vehicles Act is maintainable and the amended provision of Section 100A of the Code of Civil Procedure introduced by the Code of

Civil Procedure (Amendment) Act, 2002 has no impact on the power of a Division Bench to entertain and adjudicate the same. The Division Bench in the case of RSRTC V/s Vaibhav Kumar (supra) found that the said view of the Division Bench in the case of Fazal Ali V/s Amna Khatun and ors, no longer hold the field in view of the subsequent judgment of Apex Court in the case of Kamal Kumar Dutta and another V/s Ruby General Hospital Ltd. and ors. and the Division Bench of this Court in the case of RSRTC V/s Vaibhav Kumar has held that such special appeals are not maintainable even if such special appeals are preferred against the order of the learned Single Judge arising out of any special law or against the order of the Tribunal. In this connection, observations made by the Hon'ble Supreme Court in the case of Kamal kumar Dutta (supra) is required to be taken into consideration. The aforesaid case arose from the proceedings under the Companies Act against the order of the Company Law Board. An appeal was filed before the High Court under Section 10F of the Companies Act. The learned Single judge passed the order under Section 10F of the Companies Act. From the order of the learned Single Judge, the matter was carried further to the Hon'ble Supreme Court and an objection was taken on the ground that the appellant had alternative remedy of

approaching the Division Bench under Clause 15 of the Letters Patent. While considering the said question, in para 23, the Hon'ble Supreme Court has observed as under:

“Therefore, where appeal has been decided from an original order by a Single Judge, no further appeal has been provided and that power which used to be there under the Letters Patent of the High Court has been subsequently withdrawn. The present order which has been passed by the CLB and against that an appeal has been provided before the High Court under Section 10F of the Act, that is, an appeal from the original order. Then in that case, no further Letters Patent Appeal shall lie to the Division Bench of the same High Court. This amendment has taken away the power of the Letters Patent in the matter where the learned Single Judge hears an appeal from the original order. Original order in the present case was passed by CLB exercising the power under Section 397 and 398 of the Act and appeal has been preferred under Section 10-F of the Act before the High Court. The learned Single Judge having passed an order, no further appeal will lie as Parliament in its wisdom has taken away its power. Learned counsel for the respondents invited our attention to a letter from the then Law Minister. That letter cannot override the statutory provision. When the statute is very clear, whatever statement by the Law Minister made on the floor of the House, cannot change the words and intendment which is borne out from the words. The letters of the Law Minister cannot be read

to interpret the provision of Section 100A. The intendment of the legislature is more than clear in the words and the same has to be given its natural meaning and cannot be subject to any statement made by the Law Minister in any communication. The words speak for themselves. It does not require any further interpretation by any statement made in any manner. Therefore, the power of the High Court in exercising the Letters Patent in a matter where a Single judge had decided the appeal from the original order, has been taken away and it cannot be invoked in the present context. There are no two opinions in the matter that when CLB exercised its power under Section 397 and 398 of the Act, it exercised its quasi-judicial power as original authority. It may not be a Court, but it has all the trapping of a Court. Therefore, CLB while exercising its original jurisdiction under Section 397 and 398 of the Act passed the order and against that order appeal lies to the learned Single Judge of the High Court and thereafter no further appeal could be filed."

Considering the aforesaid judgment of the Hon'ble Supreme Court, the Division Bench in the case of RSRTC V/s Vaibhav Kumar (supra) found that special appeal was not maintainable even if proceedings arose under the Motor Vehicles Act or even if the order of the Tribunal is challenged in the appeal. It is not possible for

us to accept the submission of Mr. Parihar that in view of the Full Bench Judgment of this Court, which was not brought to the notice of the Division Bench, the judgment of Division Bench in the case of RSRTC V/s Vaibhav Kumar requires reconsideration or that it should not be treated as binding precedent as it is contrary to the Full Bench judgment of this Court. At this stage, reference is required to be made to the Full Bench Decision of this Court in the case of State of Rajasthan V/s VRC Mishra (supra). In the aforesaid case, the question which was under consideration before the Full Bench was whether right to intra court appeals stands abrogated with the Repealing Act of 2001 coming into force on 29.8.2001 by which the Rajasthan High Court Ordinance, 1949 was repealed. In the aforesaid case, the concerned Company was declared as a Relief Undertaking under Section 3 of the Rajasthan Relief Undertaking (Special Provisions) Act, 1961 vide notification dtd.3.10.1998. Thereafter the concerned company approached the BIFR under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 for declaring it as a sick industrial undertaking. The BIFR declared it a Sick Industrial Undertaking and appointed I.D.B.I. as operating agency for examining the validity of the concerned Company and the prospects of its

rehabilitation. Seven writ petitions were filed before this Court in the month of February, 2000. The learned single Judge passed an interim order on 14.9.2001 by which CBI enquiry was directed. The said interim order was challenged by way of special appeals before the Division Bench of this Court. The Division Bench before whom such appeals were pending expressed doubt as to whether such special appeals were maintainable in view of repeal of Rajasthan High Court Ordinance, 1949 with the promulgation of Judicial Administrative Laws (Repeal) Act, 2001. The Division Bench referred the matter to the larger bench. The Division Bench in that case referred two questions to the larger bench. The first question was that whether the judgment given earlier has a binding effect as a part of the law of precedent or not and second question was that whether right to file intra court appeal stands abrogated with the Repealing Act coming into force on 29.8.2001 by which the Rajasthan High Court Ordinance, 1949 was repealed notwithstanding the several other existing provisions preserving the powers of the High Court in the matter of administration of justice as contained in Article 225 of the Constitution read with Sections 52, 54 and 57 of the State Reorganisation Act, 1956.

The Full Bench in the aforesaid case held that the repeal of Ordinance, 1949 cannot be termed as substantive law dealing with the subject dealt with in Article 225 of the Constitution or Sections 52, 54 and 57 or for that matter any part of part V of the S.R. Act which could affect the continuance of jurisdiction, original, appellate or other jurisdiction, power of Judges in the matter of administration of justice, rule making authority of the Court, the practice and procedure and other ancillary matters, as was vested in High Court of Rajasthan on commencement of Constitution and then provided under Part V of the State Reorganisation Act, 1956 with effect from appointed day i.e. 1.11.1956, when the new High Court was set up and constituted for new State of Rajasthan.

In para 143 of the aforesaid judgment, the Full Bench has observed as under:

"143. The High Court of Rajasthan for the part B State of Rajasthan was vested with the same jurisdiction, its Judges with same powers whether as Chief Justice, Single judge or Division Court, same Rule making authority and same practice and procedure as were of existing High Court of United State of Rajasthan as i was enjoying immediately before the commencement of the Constitution. That is the mandate of Art.225 of the Constitution. The same jurisdiction was to continue subject to law

made by the competent jurisdiction. Obviously, this refers to law that may be made on the subject or topics dealt with in Art.225. Mere repeal of Rajasthan High Court Ordinance, thereafter would not have taken away or abrogated the jurisdiction and powers of High Court of part B State of Rajasthan entrusted to it under Art.225. It was left to a competent legislature to make law in respect of any matters provided under Art.225 to provide differently or bring any change in the jurisdiction etc. which has been conferred on existing High Court under Art.225 of the Constitution."

The judgment of full Bench was delivered in different context altogether, where the question under consideration was maintainability of special appeal on account of repeal of Rajasthan High Court Ordinance, 1949 by Repeal Act of 2001. Subsequent to the repeal Act of 2001, amendment in CPC was brought w.e.f. 1.7.2002. As per amended provisions of Section 100A C.P.C. if any appeal from an original or appellate decree or order is heard and decided by the learned Single judge of the High Court, no further letters patent appeal lies notwithstanding anything contained in any Letters Patent for any High Court or any other instrument having force of law or any other law for the time being in force. The effect of provisions of Section 100A C.P.C. was considered by the Hon'ble Supreme Court in the reported case of Kamal Kumar Dutta (supra) V/s Ruby General Hospital Ltd. and

ors. Now when there is express provisions under Section 100A C.P.C., the argument of the learned counsel for the appellant cannot be accepted that the special appeal would still be maintainable if it arises out of special Act or the Division Bench judgment in the case of RSRTC V/s Vaibhav Kumar is contrary to the Full Bench judgment of this Court. Since amendment in the C.P.C. was subsequent to the judgment of Full Bench of this High Court and said provision was not under consideration before the Full Bench. Hence, now in view of judgment of Hon'ble Supreme Court as well as Division Bench of this Court, we cannot accept the argument of learned counsel for the appellant to hold that the Full Bench judgment of this Court should govern the issue regarding maintainability of special appeals arising out of decision delivered by the learned Single Judge exercising its appellate jurisdiction.

The Full Bench of this Court was considering the effect of Repeal of Rajasthan High Court Ordinance, 1949 and the Full Bench has held that right to file intra-court appeal does not stand abrogated with the Repealing Act of 2001 coming into force on 29.8.2001 by which the Rajasthan High Court Ordinance, 1949 was repealed.

As pointed out earlier by subsequent provisions in the Civil Procedure Code, now certain intra court appeals are not maintainable and when the Full Bench was not considering the said aspect of the matter, in our view, it cannot be said that the view taken by the Division Bench in the case of RSRTC V/s Vaibhav Kumar is contrary to the Full Bench decision of this Court in the case of State of Rajasthan V/s V.R.C. Mishra as the Full Bench had not examined this aspect of the matter which is required to be considered in this case and obviously that question was not there before the Full Bench. Even otherwise as pointed out earlier in view of judgment of Hon'ble Supreme Court in the case of Kamal Kumar Dutta, the issue is now squarely covered and it is ultimately the judgment of Hon'ble Supreme Court alone which is required to be taken into account wherein the Hon'ble Supreme Court has interpreted Section 100A C.P.C. Section 100A C.P.C. in its sweeps takes away all the special appeals/letters patent appeal irrespective of the fact as to whether such appeals are filed against the order of the learned Single Judge exercising appellate power under Section 96 C.P.C. or exercising appellate power under any special statute.

We are not impressed by the argument of the learned Counsel for the appellants that the moment the suit is filed, the appellant has got vested right to appeal. So far as right of appeal is concerned, it should be available at the time of filing the appeal. Therefore upto cut off date i.e. 1.7.2002, such appeals are maintainable and not thereafter. Right of appeal is required to be provided specifically under the statute and such right can always be taken away by the Legislature by amending the law. On behalf of the appellants, it is however, argued that it is not possible for poor litigants to go upto Supreme Court against the order of learned Single Judge as the remedy is very costly. However, this argument is not tenable before us as this Court is required to interpret the law as it is and not on the basis of what it should be.

The learned counsel for the appellant has also placed reliance on the case of P.S. Sathappan (supra). In the said case, in concluding part of para 30, the Hon'ble Supreme Court has observed as under:

“30.....To be noted that here again the Legislature has provided for a specific exclusion. It must be stated that now by virtue of Section 100A, no Letters Patent Appeal would be maintainable.

However, it is an admitted position that the law which would prevail would be the law at the relevant time. At the relevant time, neither Section 100A nor Section 104(2) barred a Letters Patent Appeal.”

It is not in dispute that when all the aforesaid special appeals were preferred, provisions of Section 100A C.P.C. were already applicable as the same have been filed after cut off date and in that view of the matter, all the present special appeals are now not maintainable.

Considering the aforesaid aspect of the matter, we do not find any substance in the argument of the learned advocate for the appellant that the matter is required to be referred to the larger bench as the point is now concluded by the judgment of Hon'ble Supreme Court in the case of Kamal Kumar Dutta (supra) as well as judgment of Division Bench of this Court in the case of RSRTC V/s Vaibhav Kumar (supra). Under such circumstances, all these special appeals which are filed against the order passed after cut off date by the learned Single Judge exercising its appellate jurisdiction are not maintainable. It is clarified that in this judgment we have not examined the merits of the case and all these special appeals are dismissed on the ground that the same are

not maintainable as it is an admitted fact that all these special appeals are filed against the order of learned Single Judge exercising appellate jurisdiction and the same are not filed against the order of the learned Single Judge exercising original jurisdiction.

Under the aforesaid circumstances, we dismiss all these appeals as not maintainable in view of Section 100A C.P.C. No order as to costs.

**(P.B. MAJMUDAR)J.**

**PER MR. BHANDARI, J.**

I have gone through the judgment prepared by my learned Brother. I have given my thoughtful consideration to the issue. After careful consideration of provisions of Section 100A C.P.C., it can safely be held that special appeals would not be maintainable irrespective of the fact as to whether such appellate jurisdiction was exercised by the learned Single Judge under the provisions of C.P.C. or under the Special Act. The provisions of Section 100A C.P.C. takes away right of further appeal/special appeal arising out of judgment of the learned Single Judge exercising its appellate jurisdiction. The Hon'ble Supreme

Court in the case of Kamal Kumar Dutta (supra) has further held that special appeals are not maintainable in view of provisions of Section 100A C.P.C. even in a matter where the appeal before the learned Single Judge was filed under the provisions of Special Act. The issue was further considered by the Division Bench of this Court in the case of RSRTC V/s Vaibhav Kumar in detail and I find that no contrary view is possible even in light of the Full Bench judgment in the case of State of Rajasthan V/s V.R.C. Mishra (supra). The issue referred to full Bench was in different context and the provisions of Section 100A C.P.C. was not even under consideration. Thus, in light of the provisions of Section 100A C.P.C., the appeals preferred against the judgment of the learned Single Judge are not maintainable. I accordingly, concur with the view of my learned brother who has delivered the detailed judgment on the issue.

**(MUNISHWAR NATH BHANDARI)J.**

SS/-